

FINAL STATEMENT OF REASONS:

The Initial Statement of Reasons is incorporated by reference.

UPDATES TO THE INITIAL STATEMENT OF REASONS

On October 16, 2013, the Department submitted to the Office of Administrative Law (OAL) a request for the emergency adoption of these regulations concerning the establishment of Reentry Hubs at designated institutions. The request was approved effective October 29, 2013.

The proposed regulations were noticed to the public on November 15, 2013, and public comments were accepted through January 7, 2014. A public hearing was held on this date, at which there were no attendees. Eleven people and/or organizations provided comments during this comment period.

During the period of emergency authority the Department recognized the need to provide additional clarification of certain provisions contained in the regulatory text. The amendments to the originally proposed text and the reasons for these revisions are explained below under the heading “*Changes to the Text of Proposed Regulations Initially Noticed to the Public.*”

The first renote of the amended text was distributed on January 24, 2014, to the commenters who provided comments during the initial public comment period and was posted on the Department’s internet and intranet websites the same day. The Department accepted public comments from this date through February 28, 2014. Four comments were received during this period.

The second renote of the amended text was distributed on March 10, 2014, to the commenters who provided comments during the initial and first renote public comment periods and was posted on the Department’s internet and intranet websites the same day. The Department accepted public comments from this date through March 27, 2014. One comment was received during this period.

DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the action proposed.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the CDCR’s initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The Department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the Department that would lessen any adverse impact on affected private persons or small business than the action planned.

The Department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

The Department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file for this action.

CHANGES TO THE TEXT OF PROPOSED REGULATIONS INITIALLY NOTICED TO THE PUBLIC - FIRST RENOTICE

3000 Definitions

Section 3000 is amended to change the term Cognitive Behavior Therapy to Cognitive Behavior Treatment to clarify that the Reentry Hubs cognitive behavior components are not psychotherapeutic treatment provided by licensed clinicians.

3040 Participation

Subsections 3040(g) and 3040(l)(4) are amended to change the term Cognitive Behavior Therapy to Cognitive Behavior Treatment to clarify that the Reentry Hubs cognitive behavior components are not psychotherapeutic treatment provided by licensed clinicians.

The remainder of Section 3040 is unchanged since the original emergency adoption of this rulemaking action and is not included with this renote text.

3040.1 Cognitive Behavioral Therapy and Substance Abuse Treatment Criteria

Subsection 3040.1 title is amended to change the term Cognitive Behavior Therapy to Cognitive Behavior Treatment to clarify that the Reentry Hubs cognitive behavior components are not psychotherapeutic treatment provided by licensed clinicians.

Subsections 3040.1(a) is amended to change the term Cognitive Behavior Therapy to Cognitive Behavior Treatment to clarify that the Reentry Hubs cognitive behavior components are not psychotherapeutic treatment provided by licensed clinicians.

Subsections 3040.1(b) through 3040.1(d) are unchanged since the original emergency adoption of this rulemaking action and are not included with this renote text.

3043 Credit Earning

Subsection 3043(c)(4) is amended to change the term Cognitive Behavior Therapy to Cognitive Behavior Treatment to clarify that the Reentry Hubs cognitive behavior components are not psychotherapeutic treatment provided by licensed clinicians.

The remainder of Section 3043 is unchanged since the original emergency adoption of this rulemaking action and is not included with this renote text.

Section 3043.5 is unchanged since the original emergency adoption of this rulemaking action and is not included with this renote text.

3043.6. Impact of Transfer on Credit Earning

Subsection 3043.6(a)(4) is amended to change the term Cognitive Behavior Therapy to Cognitive Behavior Treatment to clarify that the Reentry Hubs cognitive behavior components are not psychotherapeutic treatment provided by licensed clinicians.

The remainder of Section 3043.6 is unchanged since the original emergency adoption of this rulemaking action and is not included with this renote text.

3044. Inmate Work Groups

Subsection 3044(b)(2)(A) is amended to change the term Cognitive Behavior Therapy to Cognitive Behavior Treatment to clarify that the Reentry Hubs cognitive behavior components are not psychotherapeutic treatment provided by licensed clinicians.

The remainder of Section 3044 is unchanged since the original emergency adoption of this rulemaking action and is not included with this renote text.

Sections 3046, 3074.3, 3075.1, 3077.1, 3078.4, 3170.1, 3190, and 3375.2 are unchanged since the original emergency adoption of this rulemaking action and are not included with this renote text.

3375.4. CDCR Reclassification Score Sheet CDCR Form 840, Calculation

Subsection 3375.4(a)(3) is amended to change the term Cognitive Behavior Therapy to Cognitive Behavior Treatment to clarify that the Reentry Hubs cognitive behavior components are not psychotherapeutic treatment provided by licensed clinicians.

The remainder of Section 3375.4 is unchanged since the original emergency adoption of this rulemaking action and is not included with this renote text.

3375.5. CDCR Readmission Score Sheet, CDCR Form 841, Calculation

Subsection 3375.5(a)(3)(C) is amended to change the term Cognitive Behavior Therapy to Cognitive Behavior Treatment to clarify that the Reentry Hubs cognitive behavior components are not psychotherapeutic treatment provided by licensed clinicians.

The remainder of Section 3375.5 is unchanged since the original emergency adoption of this rulemaking action and is not included with this renote text.

Sections 3375.6, 3376, 3379, and 3383 are unchanged since the original emergency adoption of this rulemaking action and are not included with this renote text.

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Subsections 3040.1(b) through 3040.1(d) are unchanged since the original emergency adoption of this rulemaking action and are not included with this renote text.

3041.3 Inmate/Parolee Access to Computers

Subsection 3041.3(a) is unchanged since the original emergency adoption of this rulemaking action and is not included with this renote text.

Subsection 3041.3(b) is amended to allow the Information Security Officer (ISO) to approve inmate usage of networked computers when necessary. Some rehabilitative programs are provided via computers with restricted network access. The reference at the end of the sentence has been amended to correct an out of date reference which was relettered during a previous regulatory action.

Subsections 3041.3(c) through (i) are unchanged since the original emergency adoption of this rulemaking action and is not included with this renote text.

Subsection 3041.3(j) is amended to allow inmates who have a record of computer fraud or abuse to access computer based rehabilitative programs that do not provide Internet access. This amendment is necessary so that these inmates are not prevented from participating in the increasing number of computer based rehabilitative programs for inmates.

Subsections 3041.3(k) through (n) are unchanged and are not included with this renote text.

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PUBLIC HEARING COMMENTS:

A public hearing was held on January 7, 2014 at 10:00 a.m.

No comments were received at the hearing.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE INITIAL PUBLIC COMMENT PERIOD:

Commenter #1:

Comment 1A: Commenter states the use of Cognitive Behavioral Therapy (CBT) is “quite alarming.” CBT “emphasize[s] how bad the person is, rather than giving students something positive to build on.” Commenter states that inmates are expected to incriminate themselves in their CBT journals and may put themselves in legal jeopardy. Commenter suggests a “more positive approach” rather than the “shame and blame” model.

Accommodation: None.

Response 1A: The Department has amended Cognitive Behavioral Therapy to Cognitive Behavioral Treatment (CBT) to clarify the Reentry Hubs cognitive behavior components are not psychotherapeutic treatment provided by licensed clinicians. Extensive research has demonstrated the value of evidence-based rehabilitative programs in preparing inmates to transition back to their communities. The underlying concept behind CBT is that thoughts and feelings play a fundamental role in behavior. The goal of cognitive behavior treatment is to teach participants that while they cannot control every aspect of the world around them, they can take control of how they interpret and deal with things in their environment. Cognitive behavior treatment has become increasingly popular in recent years with mental health treatment professionals. CBT is usually a short-term treatment option. CBT is also empirically supported and has been shown to effectively help patients overcome a wide variety of maladaptive behaviors.

The Commenter refers to CBT journaling. Currently, “journaling” is not a method of delivering Reentry Hub rehabilitative treatment programs. Journaling is currently used in the Step Down Program, which is a program that is not related to these proposed regulations. Participants’ responses in their journals are not used against them, but may be discussed between the facilitator and the individual participant.

Comment 1B: Commenter states that repealing language stating that inmates placed in county facilities are entitled to the same privileges as inmates in reentry hubs is a mistake. Inmates transferred to counties are sometimes disadvantaged because counties don’t make as many programs available.

Accommodation: None.

Response 1B: The Department has no jurisdiction regarding county facilities.

Commenter #2:

Commenter is with the California Association of Marriage and Family Therapists and states their organization supports the proposed regulations. The Department’s plan to establish reentry hubs and provide CBT to inmates nearing release is “a positive step toward reducing recidivism.” CBT “is an increasingly popular type of treatment that helps patients understand the thoughts and feelings influencing their behaviors. CBT is empirically supported and has been shown to effectively help patients overcome a wide variety of maladaptive behaviors.”

Accommodation: N/A.

Response 2: The Department appreciates this organization's support of the proposed amendments.

Commenter #3:

Comment 3A: Commenter states that subsection 3040(h) of Title 15 regulations restricts inmates from rehabilitative programs based on a history of "computer fraud or abuse" however this phrase is not defined in Title 15 regulations or statute. Commenter suggests amending Section 3000 to define "computer fraud or abuse" or amending subsection 3040(h) to reference the appropriate Penal Code Section.

Accommodation: None.

Response 3A: Not all computer fraud or abuses are charged, found guilty, or plea bargained in a superior court; however, the element of a computer crime may still have been used to complete the commission of a crime. An inmate with a history of computer fraud or abuse poses a risk to the safety of the institution, staff, and the privacy of individuals in the public. Therefore the Department has an obligation to review past and present elements of crimes for computer fraud or abuse. An inmate has the right to appeal the determination.

Comment 3B: Commenter states "the intended exception to Subsection 3040(h) is not clear." Commenter states "As written, the regulation is open to misinterpretation in the distinction between 'work' and 'rehabilitative' assignments". Commenter suggests amending the subsection to read "[Inmates who have a history of computer fraud or abuse] shall not be placed in any work assignment that provides access to computers. Such inmates shall be restricted from computer-based rehabilitative programs only if Internet access is provided."

Accommodation: Partial.

Response 3B: This subsection has been amended to clarify that inmates who have a history of computer fraud or abuse shall not be placed in any rehabilitative program which provides access to the Internet. These inmates may be placed in rehabilitative programs that are delivered via computer as long as the computer is not connected to the Internet.

Comment 3C: Commenter states existing subsection 3041.3(j) does not allow for the intended exception mentioned in subsection 3040(h). Commenter proposes amending this subsection to be consistent with amended subsection 3040(h).

Accommodation: Yes.

Response 3C: The Department thanks the commenter for bring this to our attention. Subsection 3041.3(j) has been revised to allow inmates with a record of computer fraud or abuse to access computers used for rehabilitative programs as long as those computers do not have Internet access.

Comment 3D: Commenter states existing subsection 3041.3(b) "does not permit the Information Systems Officer to approve outside communication capability (i.e., Internet access) which, per the ISOR, may be needed for some rehabilitative programs." Commenter proposes amending this subsection to read "Inmates shall not access any computer connected to a network, or which has any type of direct, outside communication capability, except as approved by the ISO or provided in subsection 3770(c)."

Accommodation: Yes.

Response 3D: The Department thanks the commenter for bringing this to our attention. Subsection 3041.3(b) will be revised to read:

(b) Inmates shall not access any computer connected to a local area network (LAN), nor which has any type of direct, outside communication capability, except as approved by the ISO or provided in section 3370(c).

Comment 3E: Commenter states existing subsection 3041.3(b) contains an obsolete reference to subsection 3370(b) which was relettered to subsection 3370(c) in 1999.

Accommodation: Yes.

Response 3E: The Department thanks the commenter for bringing this outdated reference to our attention. The final regulation text has been amended to correct this reference.

Commenter #4:

Commenters “strongly disagree with the proposed changes.” Commenters state “CBT places prisoners in an unfair and unreasonable no win situation. Prisoners would be punished if they refused to complete the workbooks and they would also be punished if they confess to criminal behavior that they have already been judged on in a court of law.”

Accommodation: None.

Response 4: Please reference Response 1A.

Commenter #5:

Commenter states “I am writing to voice my vehement disapproval of and disagreement with the idea of compulsory CBT therapy for inmates in any prison, in any unit, regardless of their age, gender or crime. Such programs will do nothing but harm when it is enforced. If an inmate requests such therapy fine, but forcing it upon them is wrong.”

Accommodation: None.

Response 5: Per California Penal Code section 3020, The Department shall conduct assessments of all inmates that include, but are not limited to, data regarding the inmate’s history of substance abuse, medical and mental health, education, family background, criminal activity, and social functioning. The assessments shall be used to place inmates in programs that will aid in the inmate’s reentry to society and reduce their chances of reoffending.

Research has shown effective programming can reduce an offender’s likelihood to reoffend. In 2007, a panel of experts made recommendations to the Department and the Legislature as how the Department should improve its rehabilitative program outcomes. One recommendation was to develop individual case plans by using risk, need, and responsive assessment results. Inmates housed in a Reentry Hub are placed in specific evidence based rehabilitative programming based on the outcomes of their California Static Risk Assessment risk score and a validated automated needs assessment tool. The establishment of Reentry Hubs concentrates on pre-release programs which prepare inmates to return to their communities.

This comment references harm being done to participants by assigning them to a program involuntarily. California Code of Regulations, Title 15, subsection 3040(a) mandates that every able-bodied person committed to the custody of the Department is obligated to work as assigned by department staff and by personnel of other agencies to whom the inmate's custody and supervision may be delegated. Assignment may be up to a full day of work, education, other programs, or a combination of work, education, or other programs.

Commenter #6:

Comment 6A: Commenter suggests the Department “invest and promote more in building self-help programs with inmates as facilitators, with an occasional brought in inspirational speaker.” Commenter states he has participated in these programs before and they have been well received.

Accommodation: None.

Response 6A: Although the above comment does regard some aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is insufficiently related to the specific action to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment.

Comment 6B: Commenter suggests “expanding [the Prison Industry Authority] into some kind of union, with jobs available to prisoners who are released...” so that they can begin work and become participants in the community.

Accommodation: None.

Response 6B: Although the above comment does regard some aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is insufficiently related to the specific action to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment.

Comment 6C: Commenter suggests establishing a first time violent offenders committee to assess the likelihood of repeating behavior and allowing those inmates found suitable to participate in milestone credits and other programs.

Accommodation: None.

Response 6C: Although the above comment does regard some aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is insufficiently related to the specific action to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment.

Commenter #7:

Commenter states that the term “reentry” in Reentry Hubs is misleading because inmates in reentry hubs are still housed within a secured perimeter. Commenter suggests reactivating Work Furlough Re-Entry facilities wherein inmates 2-4 months from release can receive passes to apply and interview for jobs, work at a job outside the prison.

Accommodation: None.

Response 7: Work Furloughs and/or previous references to a Work Furlough Reentry Facility are not used by the Department; therefore, the terminology for Reentry Hubs is appropriate.

Commenter #8:

Comment 8A: Commenter protests against mandatory CBT as part of the Step Down Program. “A mandatory therapy is not really a therapy.” Commenter states that the journals used in CBT are manipulative. Commenter is “against adding this extra layer of behavior change and manipulation onto the steps.”

Accommodation: None.

Response 8A: The commenter is referencing the Step Down Program, which is a separate program implemented by the Department not related to the proposed regulations regarding Reentry Hubs.

Comment 8B: Commenter states that inmates should not be housed in the Security Housing Unit indefinitely. “No one heals or changes positively from being inside an isolation cell for so long. It is all punitive and nothing rehabilitative. Gangs are not being stopped.”

Accommodation: None.

Response 8B: Although the above comment does regard some aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is insufficiently related to the specific action to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment.

Comment 8C: Commenter states there are inmates in SHU who suffer mental illness, and doubts those inmates can fully participate in this mandatory program.

Accommodation: None.

Response 8C: Inmates housed in a Security Housing Unit (SHU) are temporarily ineligible for a Reentry Hub program pending completion of their SHU term.

Comment 8D: Commenter states there are inmates in SHU who claim innocence. Commenter states “you cannot have a mandatory program talking about ‘changing the criminal mind’ if the person did not have a problem with having criminal behavior.”

Accommodation: None.

Response 8D: Determinations of guilt and innocence are outside the scope of the Department’s authority. All inmates and parolees under the Department’s jurisdiction have been sentenced to the custody of the Department by a court of law. It would be unreasonable and impractical for the Department to exempt inmates from rehabilitative programming based on their claim of innocence.

Commenter #9:

Commenter opposes the proposed regulations. Commenter states “adding CBT as something to be enforced is out of the scope of CDCR’s jurisdiction.” Inmates should not be forced to participate. Commenter states CDCR uses information acquired in therapy for “validation, isolation, and further retaliation.”

Accommodation: None.

Response 9: Please Reference Response 5. Additionally, the commenter also mentions the information obtained during programming will be used for “validation, isolation, and further retaliation.” These comments are associated with segregated housing in the Department. The Reentry programs are located on general population yards and are not associated with segregated housing or security threat group validations.

Commenter #10:

Commenter states she is a psychologist who uses CBT as treatment and finds it very useful. Commenter feels mandatory CBT cannot be used as therapy for inmates in the Step Down Program and would amount to “forced reprogramming”. Commenter states that mandatory CBT may exacerbate the type of beliefs and thinking CBT is designed to help.

Accommodation: None.

Response 10: The commenter is referred to the response for comments #1 and #5.

Commenter #11:

Commenter summarizes his understanding of the proposed regulations, then provides a summary of his case history as a current inmate. Commenter states that he believes he would benefit from Reentry Hub programming but is not eligible. Commenter suggests changes to the eligibility requirements to allow him to participate in and benefit from Reentry Hub programs.

Accommodation: None.

Response 11: The Department continues to develop Cognitive Behavior Treatment programs for inmates with case factors which are not consistent with participation in a Reentry Hub program.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE RENOTICE PUBLIC COMMENT PERIOD:

Commenter #1-R:

Commenter states the National Association of Social Workers opposes the change from Cognitive Behavioral Therapy to Cognitive Behavioral Treatment. Commenter states CBT must be provided by licensed clinicians. Non-licensed personnel will not have the background and training to provide this therapy to inmates, who are a community with complex mental health needs. In addition, the use of non-licensed paraprofessionals may violate licensure laws.

Accommodation: None.

Response 1-R: Current correctional systems across the United States use Cognitive Behavior Treatment methods which are not delivered by licensed clinicians. The Substance Abuse Treatment program in CDCR has used CBT methods for many years and these were delivered by certified Alcohol and Other Drug counselors. The reentry programs do not address mental health issues as these issues are addressed by CDCR's mental health staff.

Commenter #2-R:

Commenter states the California Psychological Association opposes the change from Cognitive Behavioral Therapy to Cognitive Behavioral Treatment. "These regulations authorize unlicensed correctional officers to provide therapy services that require professional licensure, violating state licensing statutes. The proposed regulations (a) are in violation of state licensing laws and also (b) are a constitutional violation of equal protection by allowing services to prisoners by unlicensed persons when the services provided require a license." Commenter states "The CDCR has no exemption that allows it to provide services that require a license by persons who are not licensed. Key components of the re-entry programs [...] are therapy-oriented domains and should not be performed by anyone without a license to practice psychotherapy."

Accommodation: None.

Response 2-R: The commenter is directed to response 1-R

Commenter #3-R:

Commenter states the California Association of Marriage and Family Therapists (see commenter #2 above) opposes the change from Cognitive Behavioral Therapy to Cognitive Behavioral Treatment. Commenter is strongly opposed to unlicensed individuals providing CBT services to inmates. CBT is a psychotherapeutic service which can only be provided by licensed professionals.

Accommodation: None.

Response 3-R: The commenter is directed to response 1-R

Commenter #4-R:

Commenter states he is a licensed clinical social worker currently working in a California prison. Commenter states "cognitive treatment [...] is the domain of a psychotherapist. Commenter questions the clarity of the proposed regulations.

Accommodation: None.

Response 4-R: The commenter is directed to response 1-R

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE SECOND RENOTICE PUBLIC COMMENT PERIOD:

Commenter #1-SR (same commenter as #3 above):

Comment #1-SR A: Commenter states the second renote for the proposed regulations was delivered to him in Avenal State Prison more than a week after its publication date. Commenter requests that time-

sensitive material be delivered to inmates as priority legal mail to reduce the possibility of missing a comment period. Commenter requests that inmates be permitted to use fax or email to submit comments.

Accommodation: None.

Response 1-SR: Government Code Section 11346.8(c), part of the Administrative Procedure Act, requires that state agencies make any changes to the originally proposed regulatory text available to the public for at least 15 days. This second renote was made available for 18 days: from March 10, 2014 through March 27, 2014. The Department accepts all public comments postmarked by the date on which the comment period closes.

Inmates are not permitted to access email and fax machines for critical security reasons. It would be impractical in terms of both personnel resources and security to make exceptions to these rules.

Comment #1-SR B: Commenter states Section 3041.3(j) should be amended to allow inmates to use non-networked legal research terminals.

Accommodation: None.

Response 1-SR-B: This comment is in regard to issues that are outside the scope of the proposed regulations. The commenter has the right to petition the Department to amend the regulations in question.

Comment #1-SR C: Commenter states the definition of the term “computer fraud or abuse” must be explicitly defined in the regulations. This is necessary to avoid situations in which over-zealous staff improperly deny computer access to inmates who do not have computer fraud or abuse but have some reference to computers in their file, such as burglary of a computer. Commenter states that it should be made clear what type of institutional disciplinary actions are required to deny an inmate computer access.

Accommodation: None.

Response 1-SR-C: The commenter is directed to the response to comment 3A above.